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REMARKS

Applicant has reviewed and considered the Final Office Action mailed on April 19, 2006. Claims 61-65 are currently pending. Applicant respectfully requests reconsideration and allowance of the claims in view of the following remarks.

Claims 60-65 are patentable over McKenna under §102

Claims 60-65 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,816,904 to McKenna et al. ("McKenna").

According to MPEP §2131, to anticipate a claim under §102, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

McKenna fails to disclose all of the elements of the claimed invention. For example, McKenna fails to disclose the claimed group assignment rules processor engine that allows a viewer to review and modify or override the group assignment rules.

Claim 61 recites, *inter alia*, "a group assignment rules processor engine for managing the group assignment rules by allowing a viewer to review the group assignment rules and by processing any input from the viewer to modify or override of any of the group assignment rules."

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The Examiner applied the "dynamic allocation mode" of McKenna for the claimed group assignment rules processor engine that allows a viewer to review and modify or override the group assignment rules. (See Office Action, page 2.) However, Applicant finds that the dynamic allocation mode of McKenna is not user selected. In fact, quite the opposite is true, because the purpose of the dynamic allocation mode is to fool the user into thinking that the user is changing channels, while secretly the data collection unit substitutes another channel, usually to show commercials. (See McKenna, col. 9, lines 28-43 and col. 10, lines 38-50; "Specifically it is the data collection unit itself which controls the tuning of the cable converter. The viewer or panelist appears to control the cable converter normally, but the signals are actually intercepted by the data collection unit and it is the data collection unit that commands the tuning of the converter.... [T]he dynamic allocation process is one in which one or more channels in selected households are substituted with another test channel by the data collection unit. The materials substituted usually are commercials....") Thus, it is the data collection unit (not the user) that determines whether the dynamic allocation mode is on or off. Consequently, the viewer cannot review, modify, or override group assignment rules, as in the claimed invention. Figure 4 in McKenna lists the user selections for the data collection unit, but the dynamic allocation mode is not one of them. (See McKenna, Figure 4, col. 7, lines 25-28; "As illustrated in FIG. 4, five TV mode selector switches are provided in the form of pushbutton switches. These correspond to TV, game, computer, VCR, and survey.")

Therefore, claim 61 is patentable over McKenna under §102.

Claims 62, 63, and 65 depend, directly or indirectly, from claim 61 and, thus, inherit the patentable subject matter of claim 61, while adding additional elements and further defining elements. Therefore, claims 62, 63, and 65 are also patentable over McKenna under §102 for at least the reasons given above with respect to claim 61.

Claim 64 recites, *inter alia*, "managing the group assignment rules by allowing a viewer to review the group assignment rules and by processing any input from the viewer to modify or override any of the group assignment rules." For the same reasons

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given above with respect to claim 61, claim 64 is also patentable over McKenna under §102.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests reconsideration and allowance of the claims. If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Lea A. Nicholson or Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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Lea A. Nicholson
Lea A. Nicholson
Attorney for Applicants
Reg. No. 48,346
(732) 530-9404

Patterson & Sheridan, LLP
Attorneys at Law
595 Shrewsbury Avenue
Suite 100
Shrewsbury, NJ 07702